

Remarks

The Examiner rejected claims 1-6, 9-18, 20-27, and 29-34 under 35 USC §103 as being unpatentable over U.S. Patent No. 6,185,681 ("Zizzi") in view of U.S. Patent No. 6,314,190 ("Zimmermann"). Based on the following remarks, Applicant respectfully submits the claims are allowable over Zizzi and Zimmermann.

Claims 1-6 and 9-17 require a file that includes an encrypt key for encrypting/decrypting data files and an application identifier for specifying which application to launch. These claims also require that the file itself be encrypted. An application identifier is defined to be which application is to be launched and not merely a name of an application.

Zizzi does not disclose, teach, or suggest encryption of a file that has both an encrypt key used to encrypt/decrypt data files and an application identifier. Zizzi merely encrypts the data files themselves using an encryption key value. The encryption key value is not encrypted itself, which is required by Applicant's claims 1-6 and 9-17. See col. 9, lines 20-32. Moreover, the encryption key value is not used to decrypt the data files, which is also required in Applicant's claims 1-6 and 9-17. See Summary lines 30-45. Still further, Zizzi does not describe anywhere that the encryption key value also includes an application identifier defined to be the application that is to be launched. Because Zizzi merely discloses encryption using one key and decryption using another key, whereas Applicant more particularly claims a file that holds both a key for encrypt-

ing/decrypting a data file and an application identifier, and because the file itself is also encrypted (something Zizzi does not do), Applicant respectfully submits that Zizzi does not disclose, teach, or suggest any of these claimed elements. Applicant also reviewed the areas cited in paragraph 4 of the office action and cannot find any of the above mentioned claimed requirements in Zizzi.

Zimmermann does not disclose, teach, or suggest encryption of a file that has both an encrypt key used to encrypt/decrypt data files and an application identifier. Zimmermann merely encrypts a message (email, binary file, text, or the like) using a public key and decrypts the message using a private key, which is a different key than the public key. See Summary lines 30-60. The same key is not used to both encrypt and decrypt the message, as claimed by Applicant. Zimmermann also does not disclose, teach, or suggest a file that includes an application identifier along with the key used to encrypt/decrypt the message, also as claimed by Applicant. Further, Zimmermann does not disclose, teach, or suggest that the file is also encrypted itself.

Similar to Zizzi, because Zimmermann merely discloses encryption using one key and decryption using another key, whereas Applicant more particularly claims a file that holds both a key for encrypting/decrypting a data file and an application identifier, and because the file itself is also encrypted (something Zimmermann does not do), Applicant respectfully submits that Zimmermann does not disclose, teach, or suggest any of these claimed elements. In view of the above arguments, Applicant requests that the rejections to claims 1-6 and 9-17 with respect to Zizzi and Zimmermann be withdrawn.

Claims 29-31 require generating a file, a randomized password be created based on a size of the file and a list of possible passkey components, and then using the randomized password to encrypt the file. Zimmerman relates to a random key being used to encipher, or convert, plain text files to encrypted messages. See col. 6, lines 33-45. Both Zizzi and Zimmerman do not relate to generating a file, then creating a randomized password based on, among other components, a size of the file, and then using the randomized passkey to encrypt the generated file. Zizzi and Zimmerman merely encrypt a data file and nothing more, never mind generating a file and then encrypting that file with a randomized password.

Applicant respectfully submits that use of Zimmermann's disclosure of a random key being used to convert text files to encrypted messages in order to render obvious Applicant's claimed password based on varying a file size and then using the password to encrypt a file can only be the result of hindsight. When a combination of Zimmerman and Zizzi fails to teach or suggest a password generated from varying a file size, there must be some motivation for one skilled in the art to modify the combination in order to arrive at the claimed invention.

For a rejection to be proper under 35 USC § 103, there must be some teaching or suggestion in the references to make the suggested modification. Because neither Zizzi nor Zimmerman relates to generating a file, then creating a randomized password based on, among other components, a size of the file, and then using the randomized passkey to encrypt the generated file, there is no motivation for one skilled in the art to

make the suggested modification to the references. Hence, the rejections to claims 29-31 with respect to Zizzi and Zimmerman should be withdrawn.

Claims 25-28 require that the decryption of data files occur in memory, meaning no temporary files are created that may be unencrypted and later retrieved by an unauthorized user. Applicant's invention guards against creating unencrypted files while encrypting or decrypting protected files. The office action states in paragraph 9 that the specification states encryption/decryption is to take place in a computer's local memory but no patent identification is given. However, Applicant cannot find such support in either Zizzi or Zimmermann.

Zimmerman discloses several types of storage mediums, all of which would create unprotected data that may be retrieved by an unauthorized user and are, therefore, not the same as Applicant's claimed memory. Col. 5 line 1 relates to a hard drive main memory for storing data for later retrieval, col. 5 lines 8-11 relates to cache memory for storing data for frequent retrieval and is the opposite teaching as Applicant's claimed memory that inhibits later retrieval, col. 5 line 4 relates to persistent storage for storing date and is the opposite teaching as Applicant's claimed memory. In addition to a lack of teaching or suggestion of Applicant's memory, Zimmermann further lacks any teaching or suggestion of encryption/decryption in memory. Therefore, Applicant respectfully submits that Zimmermann does not disclose, teach, or suggest the step of decrypting a data file in memory.

Zizzi merely discloses that a computer has long term memory such as a hard disk and a short term memory such as RAM (col. 5, lines 50-55). There is no description of RAM or the hard disk being able to decrypt files without storing unprotected data on a medium for retrieval by unauthorized users. In addition to a lack of teaching or suggestion of Applicant's memory, Zizzi further lacks any teaching or suggestion of encryption/decryption in memory. Therefore, Applicant respectfully submits that Zizzi does not disclose, teach, or suggest the step of decrypting a data file in memory.

Claims 18-24 and 32-34 require a first storage device having a data file stored on it, a second storage device located remotely from the first storage device, and a program for copying the data file from the first storage device to the second storage device.

The office action at paragraph 9 cites the article "A cryptographic file system for Unix" and official notice as a basis for rendering these claims obvious. Applicant respectfully demands that the Examiner produce authority for his conclusion that Applicant's claimed first storage device having a data file stored on it, claimed second storage device located remotely from the first storage device, and claimed program for copying the data file from the first storage device to the second storage device is well known in the art.

Moreover, paragraph 13 of previous office action took official notice that data on a plurality of storages, the use of distributed data storage, and backup data storage

systems are well known in the art. Official notice was not taken on the claimed combination of a first storage device having a data file stored on it, a second storage device located remotely from the first storage device, and a program for copying the data file from the first storage device to the second storage device. If official notice is now being taken on this combination, Applicant respectfully demands the Examiner authority be produced.

Applicant's contention that such combination is not known in the art is further supported by the fact that the art referenced in the final office action, Matt Blaze entitled "A cryptographic file system for Unix", does not teach or suggest any second storage device remotely located from a first storage device and where a program can copy a data file from the first storage device to the second storage device. This article merely relates to encryption and not saving data from a first storage device to a second storage device that is remotely located from the first storage device.

"It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work." (emphasis added) MPEP sec. 2144.03(A); *In re Ahlert*, 424 F.2d 1088. 1091 (CCPA 1970). "It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record as the principal evidence upon which a rejection was based."

Page 13
Serial No. 09/532,269
Response to Office Action

MPEP sec. 2144.03(A). Moreover, if Applicant's traverse of the Examiner's official notice is inadequate, "the Examiner should include an explanation as to why it was inadequate." MPEP sec. 2144.03(C). Based on these arguments and support from the MPEP, Applicant respectfully requests that the official notice rejections be withdrawn.

Based on the foregoing arguments related to Zizzi and Zimmerman coupled with the citations from the MPEP, Applicant respectfully submits all rejections should be withdrawn and that the claims are in condition for allowance.

Respectfully submitted,



Wesley W. Whitmyer, Jr., Registration No. 33,558
David Chen, Registration No. 46,613
Attorneys for Applicant
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
203 324-6155